

STIPULATION FOR DISMISSAL OF PROTESTS

This Stipulation is made and entered into between the Moapa Valley Water District ("MVWD") and the United States Department of the Interior, Bureau of Land Management and National Park Service (collectively the "Federal Bureaus").

RECITALS

- A. On December 4, 2000, MVWD filed Applications 66976-66999, inclusive for a combined maximum duty of approximately 4,550 acre-feet per year, with the Nevada State Engineer's Office. Incorporated in these change applications are Applications 66334-66339 inclusive, filed on May 5, 2000, by Robert and Vivian Lewis, et al. (the above listed applications shall hereinafter be referred to as the "Applications"). MVWD intends to pump up to 4,550 acre-feet of groundwater from the Meadow Valley Wash Hydrographic Basin pursuant to these rights, for a period of up to 25 years for power plant cooling purposes by the Meadow Valley Generating Company, and thereafter, for municipal and domestic uses in MVWD's service area.
- B. The Federal Bureaus filed timely protests to the granting of water rights under the Applications pursuant to the Federal Bureaus' responsibility to protect its state and federal water rights and other water-dependent resources, over which any federal agency had jurisdiction ("federal rights and resources") in the Area of Interest, defined as, Lower Meadow Valley Wash, Muddy Springs Area, California Wash, Black Mountains Area, and Lower Moapa Valley. The Federal Bureaus are required by law to manage, protect

and preserve federal rights and resources that fall under their jurisdiction. A number of these federal rights and resources occur within or in the vicinity of the Area of Interest.

- C. MVWD asserts that the withdrawal of up to 4,550 acre-feet per year of groundwater from the proposed wells in Meadow Valley Wash near Rox will not have an adverse impact on the water rights and resources of concern to the Federal Bureaus. MVWD proposes to monitor the groundwater withdrawals and if no adverse affects are detected, increase the withdrawal from the proposed wells from an initial amount of 4,000 acre-feet per year up to a total of 4,550 acre-feet per year. Additionally, MVWD has agreed to offset any difference in the current duty of the existing water rights to be changed and the actual historic consumptive use by retiring or otherwise relinquishing existing ground and/or surface water rights in Meadow Valley Wash upstream of Rox.
- D. The Federal Bureaus assert that the proposed groundwater withdrawals from Meadow Valley Wash in the vicinity of Rox pose a risk of adversely impacting federal rights and resources. These impacts include depletion of the alluvial aquifer in the vicinity of the proposed wells, degradation of the wetland areas adjacent to the proposed wells, loss of habitat for species listed under the ESA and impacts to springs at Lake Mead National Recreation Area. The Federal Bureaus also assert that the maximum quantity of water that can be permitted under the change applications is that amount equal to the consumptive use of the existing rights. The Federal Bureaus are desirous of working in a cooperative manner with MVWD to protect these federal rights and resources and resolve any differences concerning these applications.
- E. There are a number of existing monitoring programs required by the Nevada State Engineer currently in place for various areas in the vicinity of Lower Meadow Valley

Wash including the Muddy Springs Monitoring Plan approved by the State Engineer for water rights permits 55450 and 58269. That plan describes the obligations of MVWD and the cooperators to that Plan to conduct monitoring of hydrologic conditions in the Muddy Springs Area. MVWD desires to amend that plan by incorporating the monitoring plan attached to this stipulation. The Federal Bureaus do not object to that as provided in this stipulation.

- F. The parties acknowledge that pursuant to NRS 534.110(4) each right to appropriate groundwater in the State of Nevada carries with it the right to make a reasonable lowering of the static water level at the appropriator's point of diversion and that pursuant to NRS 534.110(5) the State Engineer may allow, at his discretion, the water level to be lowered at the point of diversion of a prior appropriator so long as the rights of holders of existing appropriations can be satisfied under such express conditions.
- G. The State Engineer has set an administrative hearing on the protests of the Federal Bureaus and other protestants commencing February 5, 2002.
- H. The parties acknowledge that other entities and individuals have lodged protests to the Applications, but such additional protestants are not parties to or in any way bound or prejudiced by this Stipulation.
- I. The parties agree that the preferred conceptual approach for protecting federal rights and resources from unreasonable adverse impacts from groundwater pumping in the Area of Interest is through the use of monitoring, management and mitigation of groundwater pumping. The common goal of the parties is to manage the groundwater development in the Area of Interest without causing unreasonable adverse impacts to the federal rights and resources. Groundwater and the effects of pumping need to be properly monitored

and managed to avoid adverse impacts to the Area of Interest. There is a need to obtain accurate and reliable information of the aquifer's response to pumping stresses and the impact of that pumping on the resources of interest to the Federal Bureaus. This is to be accomplished by implementing the monitoring, management and mitigation plan as set forth in Exhibit A to this Stipulation. The parties have determined that it is in their best interests to cooperate in the collection of additional hydrologic and hydrogeologic information about the various aquifers within the Area of Interest.

- J. The parties desire to resolve the issues raised by the protests according to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties do agree as follows:

1. The Federal Bureaus hereby expressly agree to withdraw their protests to the Applications and agree that the State Engineer may rule on the Applications based upon the terms and conditions set forth herein. It is expressly understood that this Stipulation is binding only upon the parties hereto and their successors, transferees and assigns, and shall not bind or seek to bind or prejudice any other parties or protestants, including the United States as trustee on behalf of the Moapa Band of Paiute Indians or any other Indian tribe.
2. The parties agree to implement the Monitoring, Management and Mitigation plan, attached hereto "Exhibit A", which is expressly incorporated into this Stipulation as if set forth in full herein.

3. MVWD agrees that groundwater withdrawals will be limited to 4,000 acre-feet per year from the proposed wells that are the subject of the Applications unless additional groundwater withdrawal, not to exceed a total of 4,550 acre-feet per year, is agreed to by the parties and the State Engineer based on the results of monitoring conducted in accordance with Exhibit A. The parties agree that an amount of water less than 4,000 acre-feet per year shall be withdrawn by MVWD, unless MVWD relinquishes or otherwise permanently withdraws surface water in Meadow Valley Wash upstream of Rox equal to the amount of the reduction. The amount of water shall be as ordered by the State Engineer or as agreed to by the parties if not so determined by the State Engineer.
4. If the parties agree to make the Plan in Exhibit A part of the existing Muddy Springs Monitoring Plan referenced in Recital E, that Plan shall be amended to include the Bureau of Land Management, working through its Ely Field Office (BLM). Similarly, as a condition to joining the two Plans, Nevada Power and the U.S. Fish and Wildlife Service, who are parties to the Muddy Springs Monitoring Plan, must agree to joining the two Plans and to the addition of BLM as a party. The joinder of these plans is not a condition precedent to the effectiveness of this Stipulation.
5. This Stipulation does not waive any authorities of the Federal Bureaus or the United States, including any other agency or bureau not specified in this Stipulation, nor relieves MVWD, or any party acting in conjunction with or through MVWD, from complying with any federal laws, including, but not limited to, the National Environmental Policy Act, the Endangered Species Act, the Federal Land Policy and Management Act, and any and all rules and regulations thereunder. It is the expressed intention of the parties that

by entering into this Stipulation, the Federal Bureaus and the United States are waiving no legal rights of any kind, except as expressly provided herein.

6. Further, this Stipulation does not affect any other legal or administrative process or proceeding concerning rights-of-way or any other action believed necessary to further the development and/or use of the water sought under the Applications.
7. The parties expressly acknowledge that the Nevada State Engineer has, pursuant to both statutory and case law, broad authority to administer groundwater resources in the State of Nevada and, furthermore, that nothing contained in this Stipulation shall be construed as waiving or in any manner diminishing such authority.
8. The parties agree that a copy of this Stipulation shall be submitted to the Nevada State Engineer prior to the commencement of the administrative proceedings scheduled to begin on February 5, 2002. At that time, the parties shall request, either in writing, or on the record at the beginning of the scheduled proceeding, that the State Engineer include Exhibit A of this Stipulation as part of the permit terms and conditions, in the event that he grants Applications 66976-66999, inclusive and Applications 66334-66339 inclusive, in total or in part. In addition, the parties will request that the State Engineer state in writing, prior to the hearing, that he will incorporate Exhibit A of the Stipulation into the permit terms in the event that he grants such Applications, in total or in part. A copy of the proposed request letter to the State Engineer is attached to this Stipulation as Exhibit "B" and is made a part hereof. If the State Engineer does so state, then the Federal Bureaus, at their option, may attend the hearing, but will present no issues or statements that are adverse to the interests of the MVWD.
9. Notices. If notice is required to be sent by the parties, the addresses are as follows:

If to Federal Bureaus:

Assistant Field Manager
Renewable Resources
Ely Field Office
Bureau of Land Management
HC 33 Box 33500
Ely, NV 89301-9408

Branch Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

If to MVWD:

General Manager
Moapa Valley Water District
P.O. Box 257
Logandale, NV 89021

10. MVWD may transfer or assign its interest in the water rights here involved. Any and all transferees and assignees shall be bound by the terms and conditions of this Stipulation.

As a condition to any such transfer or assignment, the transferee and/or assignee shall execute a stipulation expressly stating it is bound to all of the terms and conditions of this Stipulation.
11. This Stipulation shall be governed in accordance with the laws of the State of Nevada to the extent not inconsistent with federal law.
12. Copies of all correspondence between and data gathered by the parties pertinent to the Area of Interest shall be submitted to the State Engineer. It is the intention of the parties

hereto that the State Engineer shall be kept informed of all activities in the same fashion as are the parties hereto.

13. By entering into this Stipulation, the Federal Bureaus do not become a party to any proceeding other than the protest proceeding referenced above or waive its immunity from suit or consent to or acknowledge the jurisdiction of any court or tribunal. Nothing in the Stipulation shall effect any federal reserved water rights of the Federal Bureaus or the United States on behalf of any Indian Tribe and the Federal Bureaus by entering into this Stipulation do not waive or prejudice any such rights. The Federal Bureaus reserve all legal rights, of any kind, it possesses pursuant to or derived from Executive Orders, acts of Congress, judicial decisions, or regulations promulgated pursuant thereto. Neither party waives its rights to seek relief in any appropriate forum of its choice not expressly prohibited by this Stipulation.
14. Any commitment of funding by the Federal Bureaus or the MVWD in this Stipulation or otherwise is subject to appropriations by Congress or the governing bodies of the MVWD as appropriate.
15. This Stipulation may be amended by mutual agreement of the parties.
16. This Stipulation sets forth the entire agreement of the parties and supercedes all prior discussions, negotiations, understandings or agreements. No alteration or variation of this Stipulation shall be valid or binding unless contained in an amendment in accordance with paragraph 15.
17. The terms and conditions of this Stipulation shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors, transferees and assigns.

18. This Stipulation will become effective as between the parties upon all parties signing this Stipulation. The parties may execute this Stipulation in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original as against any party who has signed it.
19. Other entities may become parties to this Stipulation by mutual assent of the parties.

IN WITNESS WHEREOF, the parties have executed this Stipulation as of the dates written below.

UNITED STATES DEPARTMENT OF THE INTERIOR

Date: Feb. 1, 2002

BUREAU OF LAND MANAGEMENT

By Eric R. Luse

Title: Acting Field Manager

Date:

Jan. 3, 2002

NATIONAL PARK SERVICE


By

William F. Sullivan

Title: Superintendent of Lake Mead National
Recreation Area

Date: FEB 4, 2002

NATIONAL PARK SERVICE

By 
Title: Regional Director, Pacific West Region

Date: _____

MOAPA VALLEY WATER DISTRICT

By _____

Title: _____

ATTEST:

Date: Jan. 31, 2002

MOAPA VALLEY WATER DISTRICT

By Ivan Cooper
Ivan Cooper
Title: Chairman, Board of Directors

ATTEST:
Van P. Robinson
Van P. Robinson

EXHIBIT A
for
Stipulation for Dismissal of Protests between MVWD and the Federal Bureaus

**MONITORING, MANAGEMENT AND MITIGATION PLAN FOR FUTURE
PERMITTED GROUNDWATER DEVELOPMENT IN MEADOW VALLEY WASH**

The purpose of this plan is to describe the obligations of Moapa Valley Water District (MVWD), and the National Park Service and the Bureau of Land Management (herein referred to as the Federal Bureaus) regarding the monitoring, management, and mitigation of potential impacts due to development of groundwater resources in the Meadow Valley Wash area. This plan applies to proposed groundwater development in Meadow Valley Wash that consists of change applications numbered 66976 – 66999 filed by the Moapa Valley Water District and 66334 – 66339 filed in care of Robert C. and Vivian Lewis.

MVWD has been monitoring water levels, water temperature, and spring discharge rates in the Muddy Springs and Coyote Spring Valley areas since 1997. This monitoring is being done in cooperation with the U.S. Fish and Wildlife Service, the National Park Service, and Nevada Power Company. The existing *Muddy Springs Area Monitoring Plan* (which was approved by the Nevada Division of Water Resources) is amended to include the monitoring of water levels and stream discharge, and the development of trigger levels and mitigation measures as described in this plan.

1. Monitoring Requirements

A. *Production Wells*

- MVWD will record discharge from MVWD production wells in Meadow Valley Wash. Discharge will be recorded on a continuous basis. Continuous water level data will be collected in each production well, as is feasible.

B. *Monitoring Wells*

- Water levels will be monitored in each aquifer (including the alluvium, the Muddy Creek Formation, the Horse Spring Formation and the regional carbonate aquifer) from which groundwater is withdrawn. MVWD will maintain the existing monitoring well (referred to as MW-1 and completed in the alluvium, Muddy Creek Formation, and upper Horse Springs Formation) that was constructed during the aquifer testing conducted in 2001. MVWD will also maintain the existing Breedlove wells as monitoring wells.

Additionally, MVWD, in consultation with the Federal Bureaus, shall locate and construct a monitoring well in the regional Paleozoic carbonate aquifer near Rox and a monitoring well in the alluvial aquifer near the Hoya siding (subject to the

acquisition of rights-of-way from the BLM and Union Pacific RR). Additional or replacement monitoring wells may be installed as necessary upon agreement by MVWD and the Federal Bureaus.

- MVWD will monitor water levels in all monitoring wells (including all three zones screened in MW-1) on a continuous basis for at least 1 year prior to, and at least one year following, start up of the Meadow Valley Generating Project (MVGP). After that time, monitoring may be reduced to quarterly measurements if MVWD, the Federal Bureaus and the Nevada State Engineer approve a reduction in the frequency of monitoring.

C. *Stream Flow and Water Quality in Meadow Valley Wash*

- Stream discharge in Meadow Valley Wash will be measured both up and down gradient of the proposed production well field. The stream gaging station near Rox has already been reactivated by the U.S. Geological Survey (USGS) in the area hydraulically down gradient of the proposed well field. BLM, in consultation with the USGS, shall install a second stream gage near the up gradient monitoring well that will be constructed as part of this plan. MVWD will pay for costs of installation and monitoring. It is understood that the USGS will monitor such gage and data will be available in the Annual USGS Water Resources Data report for Nevada.
- MVWD will collect water quality samples and have them analyzed for major ions, trace elements, and isotopes at selected production wells semi-annually for one year prior to and for two years following the start up of the MVGP. After that time, water quality monitoring may be reduced to less frequent sampling if MVWD and the Federal Bureaus approve the reduction in the frequency of monitoring.

D. *Hydric Soil Moisture Monitoring*

- MVWD shall monitor soil moisture in wetland areas near the Rox gage identified by the BLM. MVWD, in consultation with the BLM, shall install 3 soil piezometers per transect according to guidelines provided by BLM. In general, piezometers will be installed along transects across wetland areas to depths of about 10 feet. At this time, no more than 3 transects are anticipated. The number of transects and piezometers may be changed if MVWD, the Federal Bureaus, and the Nevada State Engineer approve the change in monitoring.
- MVWD shall also monitor soil moisture using TDR (Time Domain Reflectometry) technology. MVWD, in consultation with the BLM, shall install moisture probes across and adjacent to wetland areas according to guidelines provided by the BLM. In general, the total number of moisture probes shall be at least 1.5 times the number of piezometers.

E. *Quality of Data*

- MVWD and the Federal Bureaus will make measurements and collect data according to USGS standard protocols as set forth in the *National Handbook of Recommended Methods for Water-Data Acquisition*, U.S. Geological Survey, Reston, Virginia, 1977.

F. *Reporting*

- MVWD will report the results of production, water level, stream discharge, and water quality monitoring under this plan in their annual Muddy Springs Area Monitoring Report.
- All data collected by MVWD and the Federal Bureaus, under, or as described in this plan, shall be fully and cooperatively shared among the parties. Data shall be provided electronically to all parties within 90 days of collection.

2. Mitigation Requirements

- Trigger levels shall be identified by MVWD and the Federal Bureaus no later than one year after groundwater production for beneficial use has begun. Mitigation will be required if a trigger level is reached or if the Nevada State Engineer determines that unreasonable impacts due to MVWD pumping has occurred or is likely to occur.
- MVWD will implement mitigation measures agreed to by MVWD and the Federal Bureaus. Mitigation measures shall include one or more of the following:
 - Geographic redistribution of pumpage;
 - Reduction in pumpage;
 - Restoration/modification of existing habitat;
 - Establishment of new habitat;
 - Augmentation of water resources with pumped groundwater;
 - Other measures, as agreed to by MVWD and the Federal Bureaus and/or required by the State Engineer, that are consistent with this agreement.

3. Modification of the Plan

- MVWD and the Federal Bureaus may modify this plan by mutual agreement. The parties also acknowledge that the State Engineer has the authority to modify this plan. In addition, MVWD and the Federal Bureaus may individually or jointly petition the State Engineer to modify this plan in the event that mutual agreement cannot be reached. Any such petition shall only be filed after 90 days written

notice to the remaining party. Either MVWD or the Federal Bureaus may submit written comments to the State Engineer regarding the merits of any such petition for modification.